

## **MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

February 27, 2009

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on February 27, 2009. Members present were Chairman Peter Brown, Louis Stout, James Griggs, Carolyn Edwards and Kathryn Moore. Members absent were Barry Stumbo and Janice Meyer. Others present were Jim Hume, Division of Building Inspection; Barry Brock, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Jim Marx, Bill Sallee, Barbara Rackers and Wanda Howard.
- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the October 31, 2008 meeting would be considered at this time.

Action – A motion was made by Ms. Edwards, seconded by Mr. Griggs, and carried unanimously (Meyer, Stumbo absent) to approve the minutes of the October 31, 2008 meeting.

At this point, Chairman Brown asked all those present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

### **III. PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
- a. **C-2005-53: FENDER FUNERAL DIRECTORS** - the Board of Adjustment has requested a revocation hearing for a conditional use permit granted in May 2005 (to expand and occupy an existing residential structure as a funeral home in an Agricultural-Urban [A-U] zone, on property located at 1593 Russell Cave Road [Council District 2]) for failure to comply with conditions imposed at the time of approval.

The conditions imposed at the time of the approval by the Board are as follows:

1. The funeral home shall be established in accordance with the submitted application and site plan, or as approved by the Division of Building Inspection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The design of the off-street parking areas and access to Russell Cave Road shall be subject to approval by the Division of Traffic Engineering.
4. The off-street parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. Any landscape buffers required by Article 18 of the Zoning Ordinance for the vehicular use areas shall be extended to include the full extent of the property perimeter, excluding frontage on Russell Cave Road. Existing landscaping shall be retained and maintained to the maximum extent feasible.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. Any outdoor pole lighting for the facility shall be of a shoebox (or similar) design, with light shielded and directed downward to prevent any disturbance to surrounding residential properties.
8. The current privacy fence shall be maintained and extended to 10' from the sidewalk at

Russell Cave Road, unless the affected neighbor is opposed.

With respect to the scheduled revocation hearing, Mr. Hume, with the Division of Building Inspection, asked the Board for a 30-day postponement that would allow him to continue working toward a resolution with the applicant and his attorney.

Mr. Marx stated that if the intent was to amend the conditional use request, the Board might want to consider granting a 60-day postponement since the applicant would not have time to meet the filing deadline for the March meeting.

Representation – Mr. Richard Murphy, attorney, was present representing the appellant and stated that they had not talked about amending the conditional use permit, but rather to complete the imposed conditions in phases, which he didn't think would require an amendment.

Mr. Hume explained that, as part of their permit, the applicant asked for an addition to the existing building; however, the applicant has been unable to build the proposed addition or install the required parking at this time. He stated that Building Inspection was willing to do this as a phased operation, allowing the applicant to satisfy the requirements for what is existing since the funeral home use has been granted. Mr. Hume said he wasn't sure that it would be required to amend the previously approved site plan or just simply allow it to progress in phases.

Mr. Murphy said they would be agreeable to a month's postponement; and if something came up where they would need to amend the conditional use permit, the Board would be informed of that.

Chairman Brown asked how long the funeral home has been operating. Mr. Hume said the case came before the Board in May 2005; and that it was a year or so after the Board's approval that the operation of the funeral home was started. Mr. Murphy added that they had a permit for the interior of the structure; but it was the exterior portion of the work that was at issue. Chairman Brown commented that it has not been quite four years since the Board heard and approved this case; and that he was troubled that the imposed conditions had not been met to date. He said he didn't know if the Board was in a position to revoke the conditional use; however, he asked if anyone wanted to comment on or discuss the issue at hand.

Mr. Hume commented, with respect to the conditions that were set forth, that the Board certainly had sufficient reason to revoke the permit. Chairman Brown suggested that another course of action, besides a postponement, was to revoke the conditional use after which the applicant could come back to the Board subsequent to his compliance with the set conditions.

Mr. Murphy explained that Mr. Fender, the appellant, has met with Mr. Hume to discuss the additional paving needed for the parking lot; and that bids for the project have been obtained. However, it was noted that the asphalt plants are closed and the necessary work cannot be completed at this time. He said Mr. Hume had suggested a postponement, which they had agreed to; and they would be demonstrating to Mr. Hume that the bids are coming in, etc. Further, he thought the Board would have to have a hearing before revoking the conditional use permit. Mr. Murphy went on to say that Mr. Fender is a small business owner who provides an important service to the community, noting that there have been occasional services held on site since they are permitted to do so. He asked the Board not to conduct the revocation hearing today because it was their understanding that a postponement would be requested. Mr. Murphy reiterated that the appellant was making progress with respect to the paving of the additional parking.

Chairman Brown said there was no dispute that the appellant has had nearly four years to comply with the conditions, but he has not. Mr. Murphy explained that part of the issue involved the previously approved site plan that showed an expansion to the house, which is used as the funeral home; however, the proposed (chapel) addition was never constructed. He told the Board that the appellant was under the impression that some of the work would not have to be done until the building addition was actually constructed, which Mr. Hume clearly explained to him was not the case. Mr. Murphy noted that the appellant was able to secure a small business loan for the funeral home operation; and it was necessary to keep the operation going in order for

his client to be able to make payments under that loan. Mr. Hume added that a Certificate of Occupancy was issued for the building on 6-8-06, which noted that the appellant was to meet the Board's set conditions.

Chairman Brown related his understanding that the Board's conditions usually are satisfied prior to the issuance of an occupancy permit. Mr. Hume responded that the inspector who issued the Certificate of Occupancy was no longer with Building Inspection; and that he didn't know why the permit was issued prematurely, being unable to answer for the inspector's action. Mr. Hume emphasized that this is not standard practice.

Mr. Stout felt that this situation should be straightened out as quickly as possible, considering the funeral home has been in operation since 2006; and that the Board would be better served, since the appellant has gone to the expense of borrowing money and starting a business, he didn't want to see him lose his business. He also did not want to see the appellant being neglectful of the conditions he has to meet. Mr. Stout also felt that the appellant should have been present, along with his attorney, in view of the problems related to his business.

Mr. Griggs questioned whether there was anyone present that may have received notice about the revocation hearing who objected to the postponement. However, there was no response.

Action – A motion was made by Mr. Stout to postpone the revocation hearing of **C-2005-53: FENDER FUNERAL DIRECTORS** until the April 24 meeting.

Chairman Brown noted although Mr. Marx had suggested a two-month postponement earlier, he understood that both Mr. Hume and Mr. Murphy were asking for only one month. However, Mr. Hume said he would be agreeable to a two-month postponement, with which Mr. Murphy concurred.

The pending motion for a two-month postponement of this matter was seconded by Ms. Edwards and carried unanimously (Meyer, Stumbo absent). Mr. Stout said this would allow plenty of time for the appellant and Building Inspection to work together to address the case-related issues.

- b. **CV-2009-9: BROADWAY CHRISTIAN CHURCH** - appeals for a conditional use permit to expand a church parking lot; and a variance to reduce the width of the required landscape buffer for the parking lot from 5 feet to 0 feet, in a High Density Apartment (R-4) zone, on property located at 179 Saunier Street. (Council District 2)

The Staff Recommended: Approval of the requested Conditional Use Permit, for the following reasons:

1. The addition of two parking spaces to this accessory parking lot should not adversely affect the subject or surrounding properties. A parking lot has existed at this location for many years, and there is sufficient room to install the required landscape buffers for the parking lot along West Second Street. Since there is currently no landscaping along West Second Street, a nonconforming situation will become compliant with the current provisions of Article 18 of the Zoning Ordinance pertaining to landscaping of these spaces.
2. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Construction of the two additional parking spaces shall be done in accordance with an amended site plan indicating the provision of a full landscape buffer in the two islands of open space that will remain on the east and west sides of the parking lot entrance at West Second Street. At the minimum, each island shall have a 3' tall hedge along West Second Street and at least one small to medium sized tree. For the southeasterly island, at the corner of West Second Street and Saunier Street, the 3' hedge shall extend around the corner along Saunier Street up to the first parking space.
2. The array of parking spaces along Saunier Street shall be redesigned to include a 3' or 5' wide landscape buffer that separates the sidewalk from the parking spaces, depending on whether or not the redesign is to include or not include the ability for vehicles to overhang

into the landscape area. This buffer shall be designed to merge with and complement the landscaping to be provided in the island at the corner of West Second Street and Saunier Street. The actual construction of the redesigned parking lot shall be done prior to or concurrent with the addition of the two parking spaces.

3. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction or demolition activity taking place.
4. All landscaping shall comply with Article 18 of the Zoning Ordinance and shall be subject to review and approval by the Landscape Examiner with the Division of Building Inspection.
5. The final design of the parking space additions and parking lot revisions shall be subject to review and approval by the Division of Traffic Engineering.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals.

The Staff Recommended: Disapproval of the requested variance, for the following reasons:

- a. Granting the requested variance would result in an unnecessary continuation of a nonconforming situation with regard to required landscaping, and also result in no separation between pedestrian movement along the sidewalk and the existing parking lot, thereby adversely impacting the public health, safety and welfare.
- b. Special circumstances have not been identified by the appellant to warrant a total elimination of the required landscaping for a vehicular use area with 190' of frontage on Saunier Street. Circumstances relating to ensuring the stability of the rebuilt sidewalk do not have a direct bearing on the ability of the appellant to provide landscaping adjacent to the sidewalk on their property.
- c. Strict application of the Zoning Ordinance will require that a full landscape buffer be provided at this location, which is feasible given the 60' width of the parking lot. Any hardship associated with this requirement is due, to a significant degree, to the appellant's decision to pursue construction of an 8' wide sidewalk without the benefit of obtaining a permit from the Division of Building Inspection.

Representation – Mr. Darryl Nunnelley was present on behalf of the Broadway Christian Church and stated that they appreciated the recommendation for approval of the conditional use request; and that they wished to request a withdrawal of the variance portion of the subject appeal, with the caveat that they would be able to work with the Planning staff to come up with a way to accommodate pedestrian traffic through the buffer for the parking lot.

For the Chairman's clarification, Mr. Marx stated that the applicant was agreeing to install the landscape buffer along Saunier Street and wished to withdraw the related variance request; however, the applicant wanted some assurance that they would be able to have some reasonable pedestrian movement from the parking lot through the landscape buffer for pedestrian access to the church property. In prior situations, he said the landscaping folks with Building Inspection have recognized this need and worked with people on that.

Mr. Stout inquired whether this was feasible. Mr. Marx answered that he thought so, because there was already one established pedestrian cut-through where the buffer wouldn't be required to go across or block an existing pathway.

Mr. Hume asked if this idea was brought up at the Landscape Review Committee meeting. Mr. Griggs replied that it was not. Mr. Hume asked if Mr. Griggs had any thoughts on the current request by Mr. Nunnelley. Mr. Griggs said he had no objections to having a couple of pedestrian pass-throughs on that long side of the parking lot, as long as Mr. Nunnelley was going to put in the required 5-foot buffer.

For clarification, Mr. Stout asked if they were planning to install a 5-foot buffer, to which Mr. Nunnelley responded affirmatively.

Chairman Brown noted that this case would be called later since an objector was present and further discussion may be necessary.

2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is

needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

ABBREVIATED HEARINGS:

- a. **V-2009-11: MILLER STREET DEVELOPMENTS, LLC** - appeals for a variance to reduce the required rear yard from 1.5 feet to 0 feet in order to retain an in-ground pool in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 227 (aka 223) Miller Street. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. A pool along the rear property line will not disturb the adjoining warehouse use. A Certificate of Appropriateness for construction of the pool and residence has been issued by the Board of Architectural Review, thus ensuring that the character of the Northside Historic District will not be impaired.
2. The shallow depth of the lot, and adjoining warehouse use along the rear property line, are special circumstances that provide adequate justification for the requested rear yard setback reduction.
3. Strict application of the Zoning Ordinance would require that the pool be shifted away from the rear property line to comply with the 18" setback requirement for accessory structures. The benefits of such a relocation are questionable.

This recommendation of approval is made subject to the following conditions:

1. The pool may remain where currently located, as reflected in the submitted site plan.
2. An amended building permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, slides of the subject property were not presented.

Representation – Mr. Benjamin Gallagher, the appellant and owner of Miller Street Developments, LLC, as well as the subject property, was present. He noted that this was his personal residence.

Referring to Mr. Gallagher's written response to question #5 on the variance application and given his profession as an architect and the staff's case assessment with regard to the submitted site plans that showed a different location than where the pool was actually installed, Chairman Brown was not entirely convinced that the circumstances surrounding the requested variance were not caused by the applicant's own actions. Despite the staff's recommendation of approval, he said he was not sure if they did so without reservation. Chairman Brown asked the applicant to explain what happened and to provide some justification for granting the variance request.

Mr. Gallagher responded that he absolutely intended no misrepresentation or to mislead anyone with respect to the location of the pool; and that the mistake he made was being unaware of the Zoning Ordinance's classification of the pool as an accessory structure, like a garage, which makes it subject to side and rear yard setbacks. He explained that the (proposed) pool was shown on the site plan that was submitted in order to get the permit for the residential structure, which was reviewed by Building Inspection at that time, and the location of the pool was acceptable to them. He said he didn't realize that the accessory structure was permitted separately, when it was being constructed as part of the primary structure. When the pool was shown on the drawings with the primary structure, which was all new construction, he assumed that it had been permitted at the same time – which actually was not the case. He proceeded with construction under the primary structure permit, not realizing that a separate permit was needed for the pool. An application for the pool was submitted as soon as he realized it was classified as an accessory structure subject to side and rear yard setbacks, which is the reason

for the requested variance.

Mr. Gallagher spoke about the process for this entire project, including public hearings, preparing a preliminary Subdivision Plan with the Division of Planning, for a single house so that he could consolidate two downtown lots and change the zoning. He also received approval from the Board of Architectural Review since the property is historic. He said, with respect to the hearings that were conducted, that he was trying to be as forthcoming as possible throughout the entire process; and that this was an honest mistake because he didn't realize the classification of the pool as an accessory structure; otherwise he would have asked for the rear yard setback to be from 18" to 0" (for accessory structures) at the time of the preliminary subdivision plan process.

Chairman Brown asked whether the pool was shown in a different location on the site plan submitted to Building Inspection than where it was actually built. Mr. Gallagher responded no, that the pool was shown in the location where it was built. However, Ms. Moore noted that the staff report indicated otherwise. Chairman Brown then asked the staff to address this issue.

For clarification, Mr. Marx presented a copy of the project drawing provided by Building Inspection that was part of the applicant's permit request.

Mr. Stout asked whether the site plan in question was approved by Building Inspection. Mr. Gallagher replied that the primary structure was approved by Building Inspection, and the accessory structure (pool) was shown on the same set of plans. Mr. Gallagher reiterated that he was not made aware of the fact, nor did he realize, that a separate permit was needed for the pool. He went on to say that as soon as he was made aware of the problem, he made an application to the Board of Adjustment for a variance to rectify it.

Referring to the site plan that was shown to the Board, Mr. Marx said this was the drawing that Building Inspection had provided to the staff indicating it was what was provided at the time the permit for residential construction was issued.

Chairman Brown inquired about the setback of the pool from the rear lot line. Mr. Gallagher responded that it was about 24 inches on the drawing shown, which was the Preliminary Subdivision Plan filed with the Division of Planning. However, he said the pool is in a different location on the actual construction drawings filed with Building Inspection, which he tried to explain was an honest mistake. He acknowledged that he changed the design prior to securing a building permit, not realizing that the accessory structure (pool) has an 18" setback requirement. He further stated that it was an honest mistake on his part, not realizing that changing the location of the pool between the preliminary subdivision plan stage and the actual construction document stage would impact the rear yard setback requirement.

Mr. Stout related his understanding that Mr. Gallagher revised the plan in question without the staff being made aware of the change. Mr. Gallagher stated that after completing the preliminary subdivision stage, he did move the pool to a different location (because he thought it was a much better design decision to put it toward the back of the property); but, it was before an application was made to Building Inspection for a permit.

Mr. Hume informed the Board that the inspector who signed off on the permit would be present at the hearing momentarily to answer any questions the Board might have.

Mr. Sallee pointed out that there was no need for Mr. Gallagher to give any further plans to the Division of Planning after the preliminary development plan submittal; and that he could work strictly with Building Inspection and the Historic Preservation staff.

Chairman Brown said they would wait until the inspector arrived to see what plan was presented to Building Inspection by the applicant. Mr. Hume noted his understanding that the permit was issued from the preliminary subdivision plan shown.

Ms. Edwards asked if the site plan that was actually used to do the building was available for viewing. Mr. Gallagher responded affirmatively. He said there were two versions -- a construction drawing and a rendering. Mr. Gallagher went on to say that there is an 8-inch-thick

concrete wall around the perimeter of the property; and that it made more sense, from a design standpoint, to move the pool away from the house and closer to the wall, for maintenance reasons.

At this point, Building Inspector George Dillon arrived at the hearing. For clarification, Chairman Brown asked him which version of the plan(s) was presented when the building permit was issued to the applicant (e.g., pool shown 24" away from rear property line or right against the property line). Mr. Dillon responded that a pool permit has not been issued yet, depending on the Board's approval or disapproval of the applicant's variance request. He said the plan that was submitted to him for review showed the pool at the zero lot line.

Chairman Brown then asked Mr. Gallagher whether the plan that showed the pool being 24" away from the rear property line was presented to Building Inspection when the permit for the residential structure was issued. Mr. Gallagher responded no, noting that the plan he submitted showed the pool against the rear property line. He stated that from the time the preliminary subdivision plan was approved, six months went by while he designed the house, during which time he made the decision to move the pool to the zero lot line.

Ms. Moore asked Mr. Gallagher if he had gotten a separate permit for the fence. Mr. Gallagher replied no, that it was included. However, Mr. Hume clarified that it would have been a line item on the permit for the single-family house that was approved; and that there probably would have been a separate document for the fence, but it was hard to say without having the permit in hand.

In response to Ms. Moore's further inquiry, Mr. Hume stated that separate permits and related fees were necessary for the fence as well as the pool. He told the Board that he was now trying to get a copy of the permit in question brought over for review.

Mr. Stout asked when the (construction) project was started. Mr. Gallagher responded that construction was started in November 2008, but the project actually started in 2006.

Following a brief discussion, Chairman Brown announced that this case would be tabled until a copy of the permit was brought over from the Building Inspection office.

(Following disposition of C-2009-5: STEPHEN and CATHY SNOWDEN, the Board returned to the aforementioned case.)

When the hearing on this case resumed, Mr. Hume noted that one point of confusion for the applicant was that he had to appear before the Board of Architectural Review, at which time a package review was done that included everything he proposed to have constructed; and that this was appropriate under the BOAR guidelines. (The BOAR application was shown on the overhead.) However, the items reviewed by Building Inspection when the applicant applied for a building permit were: a curb cut, paving for the driveway and the single-family residence. (The application for a building permit was shown on the overhead.) No fence, pool or other accessory structure was reviewed as part of this application. The site plan for the single-family residence only that was provided to Building Inspection was shown.

Chairman Brown related his understanding that a permit will be needed for the fence. Mr. Hume said that was correct, and the pool as well.

Ms. Moore asked Mr. Hume whether the preliminary plat with the pool satisfying the rear yard setback was what was presented to Building Inspection. Mr. Hume responded that the new site plan shows the pool being constructed right on the property line, which is where it is located.

Mr. Gallagher noted that the site plan Mr. Hume referenced was not the set of construction drawings that he submitted for his primary structure application. He said there were 10 (24" x 36") drawings; and although he did not request a permit for the pool or the fence, all the details for those items were shown in that set of drawings at the time. Mr. Gallagher reiterated that no one in Building Inspection advised him that he needed the two extra permits, although he now understood that it ultimately was his responsibility. He went on to say that he was trying to illustrate that it was an honest mistake, and all of the work was detailed in that set of drawings, which are on file with Building Inspection.

Ms. Moore asked Staff, in light of the shallow depth of this lot, how many shallow lots there are; and how often the Board would have to grant similar types of variances. Mr. Sallee responded that the staff does not see very many lots that are only 45' in depth (as the subject property is). He said even the narrow lots they encounter in the downtown area and some other areas are 70 to 90 feet in depth. He said this is much narrower than even the rarest of lots they typically see.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Meyer, Stumbo absent; Brown abstaining) to approve **V-2009-11: MILLER STREET DEVELOPMENTS, LLC** (a variance to reduce the required rear yard from 1.5 feet to 0 feet in order to retain an n-ground pool in a Planned Neighborhood Residential/Historic District Overlay [R-3/H-1] zone on property located at 227 [aka 223] Miller Street) for the reasons listed by the staff; subject to the two conditions listed by the staff; and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- b. **C-2009-5: STEPHEN and CATHY SNOWDEN** - appeal for a conditional use permit to establish a vehicle storage yard, in a Light Industrial (I-1) zone, on property located at 311-321 United Court. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. There are no aspects of a vehicle storage operation that are likely to be disturbing to other properties in this portion of the Blue Sky industrial area. Traffic to and from the site is expected to be minimal, and the storage areas will be fenced in accordance with the requirements of Article 8-21(o)1 of the Zoning Ordinance.
2. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The vehicle storage yard shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to undertaking the required improvements related to fencing and paving/stripping of the storage areas.
3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. The lot at 321 United Court shall not be used for vehicle storage until such time that the lot is paved, with parking spaces delineated to the approval of the Division of Traffic Engineering.
5. The currently proposed layout of the vehicle storage spaces on concrete shall also be subject to review and approval by the Division of Traffic Engineering.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, slides of the subject property were not presented.

Representation – Mr. Steve Snowden, appellant, was present. He initially spoke about the two lots on United Court, one of which is paved and striped and the other graveled, where the proposed vehicle storage facility would be operated. He said these lots will be used by a repo business that temporarily stores cars that are taken (for auction) to ADESA on Blue Sky Parkway, a short distance away from the subject property. He noted that all the cars are operable; that this is a neat, clean facility rather than a storage lot; and there is an existing chain-link fence around the property. Mr. Snowden pointed out that none of the other properties on Blue Sky Parkway have a solid fence, and very few have any blacktop at all. He further stated that there are existing facilities used for repo storage that have neither blacktop nor a solid fence. Therefore, he questioned the requirement for the installation of solid fencing and the paving/stripping of the existing gravel lot. Mr. Snowden offered to provide photos to the Board for the purpose of illustrating the parity.

Mr. Hume stated that they have had some discussion about the change of use issue a number of



times; and that some of the lots with comparable uses that the applicant mentioned were in existence prior to a change in the ordinance. He said the underlying problem in this instance is that the applicant is proposing to change the use of this property, which is the reason for Building Inspection adhering to strict compliance to the ordinance. He cautioned the Board, with respect to their consideration of this case, not to look at other properties in the immediate area, because the comparison was not "apples to apples."

Mr. Snowden acknowledged being told by Mr. Hume that some of the properties he spoke about may have existed before the ordinance change. However, he reiterated his concern about being required to pave the gravel lot on his property, when the lot next door and others in the immediate area were not. Mr. Snowden spoke about how the parking for the former use, an ice house facility, was provided in relation to the two lots on United Court. He questioned the fairness of the paving requirement.

Chairman Brown felt that Mr. Snowden made a good point; however, he explained that the Board must consider the regulations that are currently applicable to the subject property with respect to the requested change of use. A brief discussion followed.

Ms. Moore suggested that if the applicant was dissatisfied with the requirement, he could pursue a text amendment to the Zoning Ordinance through the Planning Commission and ultimately the Urban County Council. She also spoke about the nonconforming uses that are grandfathered, in which case the current regulations are not applicable.

Mr. Griggs asked when Mr. Snowden purchased the subject property. Mr. Snowden responded that it was about two years ago. Mr. Griggs then asked whether the paving and landscaping requirements were in place at that time; and if Mr. Snowden was aware of them. Mr. Snowden responded affirmatively, indicating that he was aware of the zoning regulations regarding the subject property when it was purchased. However, he reiterated about there not being one solid fence on the properties along Blue Sky Parkway, although there is screen fencing. He offered to submit photos for illustration. Mr. Snowden again raised the concern about having to pave and stripe the parking lot that currently is graveled. He said the cars that will be taken to ADESA are placed in a huge gravel lot in back, where about 2,000 cars a week are checked in.

Mr. Marx clarified, with regard to the fencing, that it is a standard requirement in the Zoning Ordinance to have a solid fence around the property. He noted the clear distinction in the Ordinance between a parking lot and a storage facility and explained that a parking lot of this size is required to be paved and striped; however, the Ordinance does not specifically require that a storage facility be paved and striped. With respect to similar cases that have been heard previously by the Board, he said the standard practice has been to impose the requirement that storage facilities be paved or repaved, but not necessarily striped in some instances. Mr. Marx said he wanted to make sure the Board understood that there is not a standard requirement in the Ordinance that calls for a storage facility of this kind to be paved. Chairman Brown related his understanding that it has been the Board's practice historically to require paving for a storage facility.

Mr. Stout asked, with regard to the solid fence, if a chain-link fence with slats would suffice. Mr. Hume responded that Building Inspection would accept a chain-link fence with slats.

Mr. Griggs related being a little confused. However, he said if this was just a storage facility and there was no actual requirement to pave it, he didn't think the condition should have to be adhered to. Mr. Snowden spoke further about the gravel lots for similar uses that customarily are seen in the area. He reiterated that the operable cars that will be brought to this facility are to be stored for 4 to 10 days before being taken to a large gravel parking lot at ADESA for auction.

Mr. Stout felt that the focus should be on the proposed use/activity rather than comparing this facility with other similar uses in the Blue Sky area, as well as whether or not paving the gravel lot is necessary.

Mr. Hume commented about a similar request for a vehicle storage facility involving Winchester Towing that was brought to the Board for consideration a few months ago. He said Building

Inspection takes the position that a facility for the storing of vehicles is to be paved, but a facility for the storing of material can remain gravel. With respect to the Winchester Towing case, he said the premise was if they were going to store vehicles on the property, it was a parking lot and paving was needed, which the Planning staff supported. Mr. Stout recalled that there was some concession to allow a portion of that lot to be paved, with a specific time frame to complete the remaining portion. Mr. Hume went on to say that the undertone of it was the lot was required to be paved because of the storing of vehicles.

Mr. Griggs reiterated that he was still confused about whether or not the Zoning Ordinance requires paving for properties used for storing vehicles in the I-1 zone. In response, Chairman Brown said it was his understanding that the Ordinance does not specifically require paving for a vehicle storage yard, although it has been the Board's practice to do so.

Mr. Marx noted, with respect to a conditional use, that it is at the Board's discretion to evaluate each request on a case-by-case basis and to do what is best in a particular situation. He said the case Mr. Hume referenced got bogged down on a lot of other issues besides the paving, mainly because of the conflict in what the applicant said about how that facility would be used, partially as a junkyard – which ultimately was why the case was disapproved.

Mr. Stout commented about the similarities between this case and the one Mr. Hume referenced. He noted being hesitant to set a precedent by not requiring the storage facility in question to be paved, unlike in the instance of the Winchester Towing case. However, Mr. Stout said he understood the applicant's position with respect to parity.

Mr. Marx briefly spoke about the different variables that can be looked at with respect to the paving issue and the importance of having paving under certain circumstances but not in others. Referring to one of the furnished photos, Mr. Snowden described the 8-acre lot next door where the parking is entirely graveled.

Ms. Moore asked Mr. Hume why it was important for this facility to have blacktop instead of gravel. He responded that it was because Building Inspection was trying to be consistent in their enforcement, and this is the interpretation they have of the Ordinance (with respect to parking lots). He said if they changed their interpretation every time there was an arguable point, Building Inspection would lose any credibility they have.

Mr. Marx pointed out the difference in the Zoning Ordinance's definition of a parking lot and a vehicle storage yard. A brief discussion followed.

In response to Ms. Edwards' inquiry, Mr. Brock said if the lot that is currently gravel were paved, there would have to be some kind of storm water management facility installed (e.g., ditch line, collection system, etc.). He further stated that if the paving of this lot is required, the applicant could not get a paving permit from Building Inspection until the Division of Engineering had reviewed and approved the storm water management plan.

For clarification, Ms. Moore asked counsel since there was no legal requirement that the condition for paving improvements be imposed, whether the Board could exclude this condition without violating the Zoning Ordinance. Ms. Boland responded yes, based on what Mr. Hume stated; and that they had not pointed to any specific requirement in the Ordinance that a storage lot be paved. In response to Ms. Moore's further inquiry as to whether it was better for the environment that the storage lot not be paved, Mr. Brock stated that if they provide adequate storm water management and water quality features within the storm water management plan, it would be just as acceptable as a gravel lot. He went on to say that with just a gravel lot, there is the potential for oil and other pollutants to drain off vehicles that are stored in the lot and migrate into the groundwater system; however, if it is paved, there is an opportunity for the pollutants that are left on a hard surface to be washed into a storm sewer system that has water quality treatment prior to the runoff entering the storm sewer or whatever receiving system it was draining into. Therefore, he said it's a case-by-case basis as far as those types of things are concerned.

Mr. Griggs asked how oil on a parking lot that goes into the storm water system is treated

beforehand. Mr. Brock responded that, based on the storm water design manuals that were adopted in 2001, certain types of facilities have to provide water quality management prior to the storm water runoff draining into a receiving system (such as a creek or another storm sewer). Those facilities can be mechanical, structural or environmental. For a parking lot, he said Engineering typically would look for some type of water quality feature or water quality structure that would allow for treatment prior to the runoff entering a public drainage system. A brief discussion followed.

Mr. Hume referred to the general regulations for parking/parking areas under Article 16-2. He read the following: "All parking areas shall be paved and drained so as to dispose of the surface water. Vehicle parking areas provided for 5 or more vehicles or contain 1,800 square feet shall be paved with asphalt, concrete, brick or other properly bound surface." He said these are the general requirements for parking.

Mr. Marx noted the section of the Zoning Ordinance that defines vehicle storage yard, as well as a parking lot, area or structure, which was displayed for the Board's review. A brief discussion followed.

In response to the question as to which category the proposed use falls into, Mr. Snowden reiterated that the cars, which are operable and driven into the proposed facility, will be stored for 4 to 8 days and then transported (driven) to ADESA. He said he didn't realize that he was opening a "can of worms" with respect to the definition of a storage yard/area or parking lot as it relates to the proposed use.

Action – A motion was made by Mr. Griggs and seconded by Mr. Stout to approve **C-2009-5: STEPHEN and CATHY SNOWDEN** (a conditional use permit to establish a vehicle storage yard in a Light Industrial [I-1] zone on property located at 311-321 United Court) for the reasons listed by the staff; subject to the conditions listed by the staff, including the deletion of Condition #4 and striking the wording "and paving/stripping" in Condition #2; and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

Mr. Stout explained the reason for his support of the motion for approval. He said it was because he had led the charge on another, similar case, which he now felt was the wrong decision (with respect to the requirement for paving) in light of the discussion today and the applicant's testimony.

A brief discussion ensued involving the Board, counsel and staff with respect to Condition #5, which the Board felt was relevant and should be retained.

Mr. Snowden stated, in response to the Chairman, that he was in agreement with and would abide by the conditions. He thanked the Board and staff for their time.

The votes were as follows:

Ayes: Edwards, Moore, Griggs, Stout

Nay: Brown

Absent: Meyer, Stumbo

The motion for approval carried, 4 to 1.

(Following disposition of the aforementioned case, the Board returned to **V-2009-11: MILLER STREET DEVELOPMENTS, LLC.**)

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or

denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2009-10: CHARLES and BETTY GETTINGS** - appeal for a variance to reduce the required side yard from 3'10" to 3 feet on the west side and to 1 foot on the east side in order to construct a single-family dwelling in a Single-Family Residential (R-1E) zone, on property located at 173 Montmullin Street. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The dwelling to be constructed will have to comply with special building code requirements, several of which pertain to fire safety. Other lots in the immediate area are also very narrow, many with homes that have limited side yards.
- b. The extremely narrow width of the subject property is a special circumstance that provides compelling justification for a reduction in each required side yard.
- c. Strict application of the Zoning Ordinance would effectively prevent the construction of a useable dwelling on the subject property, which would deprive the appellant reasonable use of the land and would create an unnecessary hardship.

This recommendation of approval is made subject to the following conditions:

1. The dwelling shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Mark Kessler was present, along with the property owner, Ms. Betty Gettings. He stated that there is a contract pending for the purchase of the property, provided that the requested side yard variance(s) is approved. He proposed to build an approximately 1,500 square-foot, single-family residence on the lot that is 18.2' wide and 100 feet deep. He said if the required side yard setbacks are adhered to, it would restrict his ability to build a useable dwelling. The variance request to 3 feet would allow windows to be installed on one side of the house. A requested variance to 1 foot is being requested on the other side (without windows) as well.

Chairman Brown inquired whether the appellants also owned the property located at 171 Montmullin. Mr. Kessler responded that they did. Chairman Brown then asked whether any consideration was given to purchasing that property. Mr. Kessler replied that it was not for sale.

Ms. Moore related her understanding that the Planning Commission authorized subdividing this parcel into two lots a couple of years ago. She asked about the history of this property, since there used to be one lot with two houses on it. Ms. Gettings answered that when the property in question was purchased, they were under the impression that it was two separate lots; however, when they decided to sell, they found out that it was not two separate lots according to the old deed. She told the Board that all the utility bills and taxes are paid separately; and that they subsequently had the property surveyed and subdivided. Ms. Moore then asked Ms. Gettings if she had ever lived in either of the houses on the property, to which the reply was no.

Chairman Brown asked about the possibility of selling 171 Montmullin. Mrs. Gettings explained the reasons for their reluctance to ask the gentleman who has lived there for about 30 years to vacate, noting

that she gave him her word that the property would not be sold. Chairman Brown commented that although he was not an architect, it was his opinion that the best thing to do in this particular situation would have been to remove both houses and build a new structure on the single 40' x 100' lot, which size-wise is still small.

Opposition – Mr. Ernest Turner, who lives at 175 Montmullin Street, was present. He stated that the house next door is already less than 5 feet from his residence; and the requested variance to 3 feet would move the proposed structure closer than he would like, making it more difficult for him to access his side yard (for maintenance purposes, etc.). His concern was that although a single-family dwelling is proposed for construction, it would probably be used for student housing, which has overtaken the neighborhood. Mr. Turner expressed his objection to the design and construction of the two-story house next to his single-story home; the proposed driveway in front of the house that would be near his living room window; and the additional noise disturbance from students, their visitors and parties. He reiterated his dislike of having another house that close to his.

Mr. William Bingham, who lives at 170 Montmullin Street, was present to express his objections to the Board. He initially said he concurred with the previous speaker's comments. He then spoke about the current lack of on-street parking for homeowners in the neighborhood due to the number of students with cars living there, as well as the undesirable design and appearance of the proposed two-story house with the garage being on the first level, under the second story.

Mr. Kessler commented about the slight increase in the side yard next to Mr. Turner's property at 175 Montmullin. He said according to the plat, the existing house is 2.4 feet off the property line, whereas he was proposing 3 feet off the property line. He went on to say that the parking situation was being addressed by having the garage space in the house. Mr. Kessler felt that the proposed construction would help to improve the neighborhood and increase the value of the adjacent properties, noting the dilapidated condition of the existing house and the exorbitant expense involved with its refurbishment.

Mr. Griggs asked if Mr. Kessler would be living in the house himself, or if it would be a rental. Mr. Kessler said it was for his sons, one of whom is a freshman at UK and the other who is a sophomore in high school. Mr. Griggs then asked about the number of bedrooms. Mr. Kessler responded that there would be three bedrooms and a study, as the plan he offered to provide showed.

Mr. Stout related his understanding that, from what the neighbors submitted, students would be living in the house Mr. Kessler proposed to build. Mr. Kessler responded affirmatively, noting that the location is very convenient to the UK campus. He said it was his observation that the neighborhood is heading toward student population; and that he understood what the neighbors who spoke were saying. Mr. Stout subsequently asked why a 2-story house was being proposed rather than a single-story dwelling similar to those on the adjacent lots. Mr. Kessler responded that the existing house, which is about 500 square feet and basically has three rooms, was built around 1945. There are two houses nearby that were built around the same time and are of similar size and architectural style. He said most of the more recently built houses have two stories and are set farther back from the street than the older remaining homes. He reiterated about the extremely dilapidated condition of the existing house on the property and how infeasible the expense to repair it would be.

Mr. Bingham offered further comment about how the community neighborhood association has fought through the years to protect this neighborhood (ultimately with R-1E zoning) and deter people from buying houses there and trying to get around the zoning regulations. He said people come in and say they're buying the houses to put their children in while they attend UK; but after they drop out or graduate, the house is put on the market for student housing. He felt that this house eventually would be used for that purpose, if the requested variance was approved. He spoke about the property owners' vested interest in the neighborhood, as opposed to others with a financial interest or investment.

Referring to Article 4-5(c) regarding the regulation of nonconforming lots, Mr. Griggs said it seems that with these two narrow lots under single ownership, this ordinance was speaking right to this case; and although the staff report mentions there have been exceptions made to this regulation in the past, he felt that the events this applicant has put in motion was the perfect scheme to circumvent the Zoning Ordinance. He said he was kind of surprised that the Planning Commission let the property owner divide the lot in question; but it was obvious that both of the houses there eventually will be torn down and these monstrosities will be built in their place. Mr. Griggs felt that this was a disservice to the neighborhood; and

therefore, he was not in favor of approving the requested variance(s).

Mr. Sallee explained to Mr. Griggs that the subdivision of the lot in question was permitted because there were two structures on the property at the time. He said he thought what happened was that one of the structures has been removed between the time the plat was approved and this request was submitted. However, Mr. Griggs noted that both of the houses are existing and identical and will eventually be torn down, as the applicant indicated. He said he didn't think tearing down one of these houses under separate ownership and subsequently the other one as a way of building two back, instead of adhering to this ordinance, was the proper thing to do.

As there were no further questions, comments or discussion, the Chairman called for a motion.

Action – A motion was made by Mr. Stout and seconded by Ms. Edwards to deny **V-2009-10: CHARLES and BETTY GETTINGS** (a variance to reduce the required side yard from 3'10" to 3 feet on the west side and to 1 foot on the east side in order to construct a single-family dwelling in a Single-Family Residential [R-1E] zone on property located at 173 Montmullin Street).

Mr. Stout then asked counsel to assist him with drafting the necessary findings of fact for disapproval of the requested variances.

(The meeting was briefly recessed at 2:52 p.m., and reconvened at 3:00 p.m.)

Mr. Stout read the following reasons for disapproval of **V-2009-10: CHARLES and BETTY GETTINGS**, which also were shown on the overhead:

1. Granting the requested variance would adversely affect the public health, safety and welfare by allowing structures built in such a close proximity that public safety services, such as fire, would not have the necessary access.
2. The need for the variance was created by the actions of the property owner in dividing the single lot into these two narrow lots.

The motion for disapproval carried unanimously (Meyer, Stumbo absent).

#### D. **Conditional Use Appeals**

1. **CV-2009-9: BROADWAY CHRISTIAN CHURCH** - appeals for a conditional use permit to expand a church parking lot; and a variance to reduce the width of the required landscape buffer for the parking lot from 5 feet to 0 feet, in a High Density Apartment (R-4) zone, on property located at 179 Saunier Street. (Council District 2)

The Staff Recommended: Approval of the requested Conditional Use Permit, for the following reasons:

- a. The addition of two parking spaces to this accessory parking lot should not adversely affect the subject or surrounding properties. A parking lot has existed at this location for many years, and there is sufficient room to install the required landscape buffers for the parking lot along West Second Street. Since there is currently no landscaping along West Second Street, a nonconforming situation will become compliant with the current provisions of Article 18 of the Zoning Ordinance pertaining to landscaping of these spaces.
- b. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Construction of the two additional parking spaces shall be done in accordance with an amended site plan indicating the provision of a full landscape buffer in the two islands of open space that will remain on the east and west sides of the parking lot entrance at West Second Street. At the minimum, each island shall have a 3' tall hedge along West Second Street and at least one small to medium sized tree. For the southeasterly island, at the corner of West Second Street and Saunier Street, the 3' hedge shall extend around the corner along Saunier Street up to the first parking space.
2. The array of parking spaces along Saunier Street shall be redesigned to include a 3' or 5' wide landscape buffer that separates the sidewalk from the parking spaces, depending on whether or not the redesign is to include or not include the ability for vehicles to overhang into the landscape area.

- This buffer shall be designed to merge with and complement the landscaping to be provided in the island at the corner of West Second Street and Saunier Street. The actual construction of the redesigned parking lot shall be done prior to or concurrent with the addition of the two parking spaces.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction or demolition activity taking place.
  4. All landscaping shall comply with Article 18 of the Zoning Ordinance and shall be subject to review and approval by the Landscape Examiner with the Division of Building Inspection.
  5. The final design of the parking space additions and parking lot revisions shall be subject to review and approval by the Division of Traffic Engineering.
  6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals.

The Staff Recommended: Disapproval of the requested variance, for the following reasons:

- a. Granting the requested variance would result in an unnecessary continuation of a nonconforming situation with regard to required landscaping, and also result in no separation between pedestrian movement along the sidewalk and the existing parking lot, thereby adversely impacting the public health, safety and welfare.
- b. Special circumstances have not been identified by the appellant to warrant a total elimination of the required landscaping for a vehicular use area with 190' of frontage on Saunier Street. Circumstances relating to ensuring the stability of the rebuilt sidewalk do not have a direct bearing on the ability of the appellant to provide landscaping adjacent to the sidewalk on their property.
- c. Strict application of the Zoning Ordinance will require that a full landscape buffer be provided at this location, which is feasible given the 60' width of the parking lot. Any hardship associated with this requirement is due, to a significant degree, to the appellant's decision to pursue construction of an 8' wide sidewalk without the benefit of obtaining a permit from the Division of Building Inspection.

Chairman Brown noted the request to withdraw the landscape variance portion of this appeal earlier in the meeting; and that Mr. Nunnelley, the church's representative, was in agreement with the staff's recommendation and the listed conditions for the conditional use. He said the Board would now hear from the objector, after which Mr. Nunnelley would be allowed to respond. However, Mr. Nunnelley noted that he and the objector had reached an understanding, which the neighbor would speak about.

Mr. Gay Reading, a resident at 417 W. Second Street, was present and spoke. He stated that he had been looking at the church parking lot for about 35 years and was well aware of the parking situation; and that he was not present in opposition, but rather to offer a different solution. He noted that he was also speaking on behalf of several neighbors in the immediate vicinity. Mr. Reading said that Second Street is a very diverse, interesting block; and that coming down Second Street, the church parking lot is the entrance to the neighborhood, the view of which has been a problem for a number of years. He suggested the construction of a brick wall 5 to 6 feet high that architecturally defines the Second Street and Saunier Avenue corner entrance into the parking lot, which would permanently screen the view of cars from the street and didn't need any maintenance. He said he didn't have a problem with the wider sidewalk that was constructed by the church because it was neat and clean, or the request for additional parking spaces; and he asked that the church not be forced to tear up paving that is already there. Mr. Reading felt that if the church would consider his suggestion for the permanent, architectural screening of the parking lot on the street side(s), it would vastly improve the streetscape.

Mr. Griggs asked Mr. Reading if the request for constructing a wall was agreeable with the applicant, to which he replied that was indicated by Mr. Nunnelley. Mr. Griggs said he thought that Mr. Reading was missing the point regarding the requirement for a landscape buffer on Saunier Avenue, which would benefit the pedestrian and automobile traffic that is there. However, Mr. Reading clarified that he was only addressing the screening on Second Street and something with enough of a return that it forms an architectural entrance into the parking lot, noting his opinion that passersby probably would not see the screening on Saunier Avenue. Photos were provided by Mr. Reading showing views of the parking lot from Second Street. Chairman Brown noted that the wall construction was not one of the listed conditions; but if the applicant and staff agreed, it could certainly be added.

In response to the Chairman's request for comment regarding the proposed wall, Mr. Nunnelley said it was fine; and that he had no problem with constructing the brick wall. He pointed out that there already is a partial 5-foot-high brick wall section on Saunier adjacent to the parking lot, as shown in the furnished photos. He stated that the entire street has no landscape buffer, noting that the plans for the new addition

at St. Paul Church include an 8-foot sidewalk with no greenspace. He said, architecturally, the proposed brick wall would fit in with the section that is there now and could be extended along Saunier to the driveway entrance of the parking lot on Second Street to provide a nicer looking entrance, as well as another section along the property line where a large white house was shown in the photo, to tie in with an old fence that is there now. Mr. Nunnelley reiterated that he didn't have a problem with the brick wall, but rather the buffer or hedge that is required.

Mr. Nunnelley further stated that the staff report indicated that they didn't obtain a permit for the sidewalk project; but he clarified that they did, from the Division of Engineering, and paid \$100 for the permit as well as a \$2,000 bond. He told the Board that Engineering came out, checked the work and released the bond; and that they weren't aware of any other permits that were needed or they would have gotten them. Mr. Nunnelley said he just wanted to ask that the Board consider the request for a brick wall at least 5 feet high along the end of Second Street and down Saunier to where the existing wall is located and not to require the buffer or hedge, even though it's in the Zoning Ordinance. He said nobody else has one, and neither the church nor the neighbor wanted it, noting that is the side the church is looking at. He reiterated that this is not consistent with the rest of the street and asked again that they not be required to put in the hedge; however, they were willing to do anything else that would suit the other neighbors as far as the brick wall.

Mr. Stout asked if this was okay with the staff, to which Mr. Marx responded that he was unclear about the area they were talking about. Chairman Brown said he thought the request was to do away with the buffer next to the sidewalk, and to construct walls at the north end of the parking lot. Mr. Marx said he understood about the wall at the corner, extending it down to where the home and (telephone) utility box is, and along Second Street; but it was not clear as to whether Mr. Nunnelley was asking to eliminate the total buffer along the 190' of Saunier Street, which was later confirmed.

Following a brief Board discussion, Chairman Brown said he thought the suggestion for a postponement was appropriate and would allow the details of this request to be worked out to everyone's satisfaction.

Mr. Saltee offered to show the Board the ordinance requirement on the overhead for their review, before considering a postponement, noting that a wall might constitute some of the required buffering, along with some additional tree planting. Mr. Nunnelley said the tree planting behind the wall would not be a problem.

Ms. Boland cautioned the Board not to rush into allowing a 5-foot brick wall to be built until there was some exploration into whether it would interfere with sight triangles at the nearby intersection. She also said this appeal was advertised as an extension of the church parking lot with landscaping and buffering only; and she didn't know if notice had been effectively given for a 5-foot solid brick wall being built right behind the sidewalk, which is a drastic change. Therefore, counsel supported a continuance.

Chairman Brown asked if Mr. Nunnelley would be opposed to re-advertising this appeal, if necessary. Mr. Nunnelley responded that he would not.

Mr. Griggs commented that this is a rectangular, flat lot with plenty of width and sufficient space for a 5-foot landscaping buffer down the 190 feet of frontage on Saunier; and that he didn't see any special circumstances that would allow the buffer not to be there without setting a precedent for other parking lot owners wanting to eliminate their required buffer as well. Mr. Nunnelley said he was not arguing that point, but noted the circumstances have already been allowed for St. Paul Church, located down the street, getting the same consideration. Mr. Griggs followed up with a question about the remodeling/building project that was being done at St. Paul's in relation to why they are not required to put in a buffer there or come before the Board. Mr. Saltee said most of St. Paul's construction involves a new building; and there was no ordinance requirement to screen a building from the street. Mr. Griggs related his understanding that this zone allows the church to come right up to the property line with their building, which Mr. Saltee affirmed.

Chairman Brown asked if there was any further discussion. Mr. Marx said he just wanted to clarify for the record that the (landscape) variance had not been withdrawn, although it was discussed; but no action was taken. Chairman Brown concurred that no action was taken. He felt that since there had been another proposed resolution, it should be looked at to make sure everyone gets a chance to participate in working out the details; and that this case should be continued to next month, with the applicant's



agreement, since the Board had already heard it.

Ms. Boland concurred with the continuance, with the provision that if a significant change was made in the application, it would be re-advertised accordingly. Chairman Brown said he thought the brick wall would be a significant change. A brief discussion about this process followed with staff.

At this point, Mr. Marx referred to the ordinance displayed on the overhead that allows the use of a certain type of wall which, he noted, complies with the landscaping requirement in question. He added that compliance with any related sight distance requirements, with respect to counsel's earlier comment about the parking lot entrance off Second Street, is a routine part of the permitting process.

Chairman Brown asked Mr. Nunnelley, if the staff determines that this case needs to be re-advertised and re-noticed, would he agree to do that. Mr. Nunnelley responded affirmatively.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Meyer, Stumbo absent) to continue **CV-2009-9: BROADWAY CHRISTIAN CHURCH** until the March 27 meeting.

E. **Administrative Review**

None Remaining

IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time.

Chairman Brown reported that he had talked with staff regarding the case that would have been heard in January concerning a proposed crematory, which was withdrawn. However, since there was an objector, an administrative appeal on this matter would be heard in March. He also spoke about having attended a meeting recently with the Planning Committee and the Planning Commission, in his capacity as Chairman of the Board of Adjustment, to talk about what the different sides did and trying to work together to coordinate the planning efforts with the city. He said another meeting was scheduled for next month, which he would report back on to the Board.

The third item the Chairman wanted to discuss was the Board's interest in arranging a meeting with Mr. Hume, of the Building Inspection staff, regarding questions or issues that may be inappropriate at this forum, which he felt the input would be helpful to the Board. After Chairman Brown determined that the Board members present wanted to meet with Building Inspection, he asked for suggestions regarding a suitable time (e.g., before/after the regularly-scheduled BOA meeting, or some other time) and place (e.g., Council Chambers or Building Inspection office). He also raised the question about any legal requirements, such as advertising or notice, that would be necessary if they met as a Board. There was discussion about putting this item on the Board's published agenda; meeting with Building Inspection separately, other than on the last Friday of the month; and combining the two meetings to avoid any additional advertising requirements. Chairman Brown recalled that there was a similar meeting with representatives from the Division of Regulated Child Care, which the Board attended prior to their 1:00 p.m. meeting. Mr. Sallee said he believed this item was put in an ordinary legal ad and included on the Board's agenda; and that the key would be advertising where the meeting would be held. Chairman Brown said that since Building Inspection was located in the Phoenix Building, it was probably best, and more convenient, to have the meeting there.

Mr. Hume suggested that the Board and Building Inspection staff could be meet at 10:30 a.m., following his BOA review meeting held with the Planning staff. The Board concurred. After the details were determined, Mr. Sallee noted that this announcement would be placed in the legal ad by staff.

V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time.

- A. House Bill 55 Training Opportunity – Mr. Sallee reminded the Board that there would be an APA audio-conference in the Division of Planning Conference Room on Wednesday, March 18, 2009, beginning at 4:00 p.m. The title of this conference is "Designing for Water Conservation", which will count toward 1.5 hours of House Bill 55 training credit for Board of Adjustment and Planning Commission members, as well as staff.

- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be March 27, 2009.
- VII. **ADJOURNMENT** - There being no further business, the Chairman declared the meeting adjourned at 3:29 p.m.

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Peter Brown, Chairman

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James Griggs, Secretary